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## Civil Rights & Judiciary Committee

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### SSB 5548

**Brief Description:** Concerning the uniform unregulated child custody transfer act.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Wagoner, Dhingra and Mullet; by request of Uniform Law Commission).

#### Brief Summary of Substitute Bill

- Specifies permitted methods of transferring custody of a child with the intent to abandon the rights and responsibilities concerning the child, including through a judicial award of custody or adoption placement by an authorized child-placing agency.
- Prohibits unregulated child custody transfers by a parent, guardian, or an individual with whom a child has been placed for adoption to someone beyond family members and other specified categories of individuals and with the intent to abandon the rights and responsibilities concerning the child.
- Prohibits a person from receiving custody of a child or acting as an intermediary in a child custody transfer if the person knows or reasonably should know that the transfer violates the prohibition on unregulated child custody transfers.
- Prohibits advertising of custody transfers by unlicensed or unauthorized persons or entities.
- Requires the Department of Children, Youth, and Families to take appropriate action under child welfare laws in response to probable violations of the prohibition on unregulated child custody transfers.

**Hearing Date:** 2/18/22

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Yelena Baker (786-7301).

**Background:**

Relinquishing Permanent Care and Custody of a Child.

Under state law related to adoptions, unless otherwise permitted by a court order or statute, it is a gross misdemeanor:

- for any parent to relinquish or transfer to another person, partnership, society, association, or corporation the permanent care and custody of any child for adoption or any other purpose; or
- for any person, partnership, society, association, or corporation, except the parents, to assume the permanent care and custody of a child.

Adoption Advertising.

Current state law prohibits advertising children offered or wanted for adoption unless the advertising person or entity is:

- a duly authorized agent, contractee, or employee of the Department of Children, Youth, and Families (DCYF), or a children's agency licensed by the DCYF; or
- a person who has a completed preplacement report required for placing a child with a prospective adoptive parent, and the report contains a favorable recommendation as to the fitness of the person to be an adoptive parent.

The advertising prohibition does not apply to television, radio, print, and other advertising media that attempts to verify the advertising is in compliance and accepts advertising in good faith without knowledge of its violation of the prohibition.

The Attorney General may bring an action under the Consumer Protection Act for adoption advertising by unlicensed or unauthorized persons or entities.

The Uniform Law Commission.

The Uniform Law Commission (ULC) is an organization that authors and promotes enactment of uniform laws in areas of law where national uniformity is desirable and practical.

In 2021 the ULC promulgated the Uniform Unregulated Child Custody Transfer Act to provide a uniform legal framework to prohibit unregulated child custody transfers. An unregulated child custody transfer is a transfer by a parent or guardian of a child or an individual with whom a child has been placed for adoption that is performed without state agency or court oversight that assures the new custodian is safe and appropriate for the child.

**Summary of Bill:**

Provisions related to relinquishing permanent care and custody of a child are repealed and replaced with the Uniform Unregulated Child Custody Transfer Act (UUCCTA).

### Permitted Methods of Transferring Custody of a Child.

A parent or a guardian of a child or an individual with whom a child has been placed for adoption may transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child only through:

- a judicial award of custody under state law related to guardianship of minors, child welfare court proceedings, or the domestic relations statutes;
- placement by or through a child-placing agency with statutory authority to identify or place a child for adoption;
- a judicial award of custody or other action in a tribal court; or
- transfer of a newborn to a qualified person, such as a firefighter or medical staff member, who is authorized under the child welfare statutes to accept transfers of newborns in certain locations, such as a fire station or the emergency department of a licensed hospital.

### Prohibition on Unregulated Child Custody Transfers.

A parent or guardian of a child or an individual with whom a child has been placed for adoption may not transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child.

The prohibition on unregulated child custody transfers does not apply to a transfer of custody of a child by a parent or guardian to:

- a parent of the child;
- a stepparent of the child;
- an adult who is related to the child by blood or by law;
- an adult who, at the time of the transfer, had a close relationship with the child for a substantial period, and whom the parent or guardian reasonably believes to be a fit custodian of the child;
- the child's Indian custodian, as defined in the federal Indian Child Welfare Act;
- a member of the child's customary family unit recognized by the child's Indian tribe under the Washington State Indian Child Welfare Act; or
- a person to whom the parent delegates parental powers regarding care and custody of the child pursuant to state law related to guardianship of minor.

A person may not receive custody of a child, or act as an intermediary in a transfer of custody of a child, if the person knows or reasonably should know the transfer violates the prohibition on unregulated child custody transfers, unless the person:

- notifies the Department of Children, Youth, and Families (DCYF) or law enforcement as soon as practicable after the transfer; or
- takes appropriate action to establish custody by one of the permitted methods of transferring custody of a child under the UUCCTA.

A violation of the prohibition on unregulated child custody transfers is a gross misdemeanor.

### Adoption Advertising.

The prohibition on adoption advertising by unlicensed or unauthorized persons or entities is

expanded to include a prohibition on advertising of services related to other custody transfers of children.

Obligations of the Department of Children, Youth, and Families.

If the DCYF has a reasonable basis to believe that a person has transferred or will transfer custody of a child in violation of the prohibition on unregulated child custody transfers, the DCYF must respond in accordance with state law related to child welfare services.

If the DCYF provides a child protective services response for a child adopted or placed through an intercountry adoption, the DCYF must:

- prepare a report on the welfare and plan for permanent placement of the child; and
- provide a copy of the report to the United States Department of State.

For the purposes of preventing child abuse or neglect, the DCYF may disclose to the Department of State only those confidential child welfare records that may assist the Department of State in informing the child's country of origin that the custody of the child has been transferred in an unregulated custody transfer and describing the child's welfare and plan for permanent placement of the child. The records retain their confidentiality subject to federal law and state law relating to the keeping and release of records by juvenile justice or care agencies.

The DCYF is not prevented from taking any appropriate action to protect the welfare of the child.

Applicability and Miscellaneous Provisions.

The UUCCTA applies to transfers of custody, or soliciting or advertising on or after the effective date of the UUCCTA, and does not apply to custody of an Indian child, as defined in the federal Indian Child Welfare Act, to the extent custody is governed by that law.

The UUCCTA includes a subsection that responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.